

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**PHILIP J. CHARVAT,**

**Plaintiff,**

**v.**

**GREAT ATLANTIC  
WARRANTY, INC.,**

**Defendant.**

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**Case No. C2-07-1078**

**JUDGE ALGENON L. MARBLEY**

**Magistrate Judge Kemp**

**OPINION AND ORDER**

This matter comes before the Court on Defendant Great Atlantic Warranty, Incorporated's, Motion to Dismiss. On December 3, 2007, Defendant filed its first Motion to Dismiss addressed to Plaintiff's original Complaint. On April 28, 2008, Defendant filed a subsequent Motion to Dismiss addressed to Plaintiff's second amended Complaint. On May 12, 2008, this Court granted Plaintiff leave to file his third amended Complaint, which Plaintiff filed on that date. Based on that filing, Defendant's Motions to Dismiss addressed to Plaintiff's original Complaint and second amended Complaint are now mooted. If, upon reviewing the third amended complaint, Defendant believes that a motion to dismiss is appropriate it may file one addressed to the third amended Complaint. Any such motion to dismiss is to be filed within thirty (30) days of this Order. Any replies to Defendants' motion shall be filed within the time limitations set forth in S. D. Ohio Civ. R. 7.2(a)(2).

**IT IS SO ORDERED.**

s/Algenon L. Marbley  
**ALGENON L. MARBLEY**  
**UNITED STATES DISTRICT JUDGE**

**DATED:** September 16, 2008